

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|-------------------------------------|---|----------------------|
| JEFFREY MARTEN, |) | |
| |) | |
| v. |) | C.A. No. 09-262 Erie |
| |) | |
| CORRECTIONS OFFICER BARGER, et al., |) | |
| Defendants. |) | |

MEMORANDUM ORDER

Plaintiff's complaint was received by the Clerk of Court on November 16, 2009, 2008, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The magistrate judge's report and recommendation, filed on September 1, 2010, recommended that the "Motion to Dismiss, or in the Alternative, Motion for Summary Judgment" (Doc. 13) filed by Defendants Corrections Officer Barger, E.D. Ray, E.J. Wojcik and Overmyer be granted in part and denied in part as follows:

1. Plaintiff's claims for monetary damages against Defendants in their official capacities should be dismissed based upon Eleventh Amendment immunity;
2. Summary Judgment should be denied Defendant Barger with regard to Plaintiff's excessive use of force claim;
3. Plaintiff's state tort claims of assault and battery against Defendant Barger should be dismissed based on Pennsylvania's sovereign immunity;
4. Summary judgment should be denied Defendant Barger with regard to Plaintiff's retaliation claim against him; and
5. Summary judgment should be granted in favor of Defendants Ray, Wojcik, and Overmyer with regard to Plaintiff's retaliation claim against them.

(Doc. 25 at 15.)

It was further recommended that Defendants Ray, Wojcik, and Overmyer be terminated

from this case.

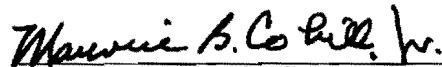
The parties were allowed fourteen (14) days from the date of service to file written objections, and any party opposing the objections was allowed fourteen (14) days from the date of service of objections to respond thereto. Plaintiff's objections were filed on September 13, 2010, and no response was filed thereto.

After de novo review of the pleadings and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this ^{28th}~~27th~~ day of September, 2010;

IT IS HEREBY ORDERED that the "Motion to Dismiss, or in the Alternative, Motion for Summary Judgment" (Doc. 13) filed by Defendants Corrections Officer Barger, E.D. Ray, E.J. Wojcik and Overmyer be GRANTED IN PART AND DENIED IN PART consistent with the Magistrate's recommendation.

The report and recommendation of Magistrate Judge Baxter, dated September 1, 2010, is adopted as the opinion of the court.


MAURICE B. COHILL, JR.
United States District Judge

cc: Susan Paradise Baxter
U.S. Magistrate Judge

all parties of record _____